

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

STEVEN PAUL FLEMING,

Plaintiff,

v.

SCRANTON, PA LACKAWANNA
COUNTY, ET AL.,

Defendants.

CIVIL ACTION NO. 3:12-CV-824

(JUDGE CAPUTO)

(MAGISTRATE JUDGE SMYSER)

MEMORANDUM

Presently before the Court is Plaintiff Steven P. Fleming's Motion to Reopen. (Doc. 8.) On May 18, 2012, Magistrate Judge Smyser issued a Report and Recommendation in this matter, recommending that the Complaint be dismissed for res judicata as the allegations were materially the same as those made in a previous claim which was dismissed for failure to state a claim. *See Fleming v. Scranton, PA, Lackawanna County*, 1:11-CV-386, 2011 WL 2791286 (M.D. Pa. July 14, 2011), *aff'd*, 461 F. App'x 170 (3d Cir. 2012). On June 26, 2012, I adopted Magistrate Judge Smyser's Report and Recommendation.

Fleming now moves the Court to reopen, arguing that the instant Complaint sufficiently establishes that Judge Smyser is biased and that he has successfully pleaded claims which require oral argument and a jury. As such, I will construe this motion as one for reconsideration, which requires at least one of the following: "(1) an intervening change in controlling law; (2) the availability of new evidence that was not available when the court granted the motion for summary judgment; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." *Max's Seafood Café, by Lou-Ann, Inc., v. Quinteros*,

176 F.3d 669, 677 (3d Cir.1999). The instant motion raises no new facts or arguments. Instead, it is a renewed attempt to reargue the merits of his Complaint, which is not permissible. "A motion for reconsideration is not to be used as a means to reargue matters already argued and disposed of or as an attempt to relitigate a point of disagreement between the Court and the litigant." *Ogden v. Keystone Residence*, 226 F. Supp.2d 588, 606 (M.D. Pa. 2002). As such, this Motion will be denied.

An appropriate order follows.

July 30, 2012
Date

/s/ A. Richard Caputo
A. Richard Caputo
United States District Judge